IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1417 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT ALIAS CHANDRAVADANTHAKAR

Versus

LAXMIBAI CHANDUMAL MURZANI

Appearance:

MR MC BHATT for Petitioner

MR JM VASU for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 14/03/2000

ORAL JUDGEMENT

This Revision Application has been filed against the judgment and order dated 8th September, 1997 of the Appellate Bench of Small Causes Court, Ahmedabad in Civil Appeal No. 78 of 1994 dismissing the appeal and confirming the judgment and decree dated 30th June, 1994

passed by the Small Cause Court, Court no.12, Ahmedabad in HRP suit no. 2028 of 1984.

2. The respondent no.1 (Original plaintiff) landlady Smt. Laxmibai Chandumal Murzani filed HRP suit no.2028 of 1984 against the petitioner who is the tenant of the suit premises bearing Municipal Census no. 108-E-1-2, being "Laxmi Vihar", situated in Jawahar chowk, Maninagar, Ahmedabad contending that the suit premises was let to the deceased Ambalal Thakore at the monthly rent of Rs.125/- + all taxes. The defendant did not pay the rent for the period from 15.8.83 and hence, the plaintiff gave a notice by registered post A.D. on 2.4.84. It is also alleged that the defendant no.1 has sub-let the suit premises to the defendant no. 2 at the monthly rent of Rs.500/-. An amendment application was moved on the allegation that the defendant nos. 1 and 2 started a tea kitley illegally in the marginal land situated in the front and adjacent to the suit premises, thereby he had contravened the provisions of The Bombay Rent Act (hereinafter referred to as the "Act") and by installing a tea kitley has created nuisance and annoyance to the landlady and neighbouring occupiers. Hence, the suit for recovery of the vacant and peaceful possession of the suit premises was filed on the ground of arrears of rent, sub-letting, nuisance and annoyance and breach of conditions of tenancy and also for recovery of Rs.1280/- by way of arrears of rent etc.

3. The defendants filed their written statement to the suit and resisted the suit of the plaintiff inter alia contending that the suit is not true and legal and is not maintainable. The present rent is not the standrd rent and it should be fixed at Rs.75/per month. The defendant no.1 has not sub-let the suit premises to the defendant no.2. The defendant no.2 being a friend of his son used to sit on the suit premises as a servant and that the suit deserves to be dismissed with costs.

4. The defendants also filed reply to the application to the amendment application contending that it is not true that after the death of his father, he has started tea-kitley in the margin land and it has not created nuisance and annoyance to the neighbourers. He is using the marginal land since last 20 years. The marginal land was also given on rent for seasonal business and tea-kitley etc. The suit has been filed with ulterior motive to snatch away possession of the suit premises.

5. The trial court framed necessary issues and after recording oral as well as documentary evidence nd after going through the evidence on record, came to the conclusion that the plaintiff has not been able to prove that the defendant is a tenant in arrears of rent as alleged. The trial court also held that the defendant no. 1 has unlawfully sub-let the part of the suit premises. Regarding standard rent, the trial court fixed the standard rent at Rs.125/- per month + municipal taxes + education cess and electric burning. Regarding nuisance and annoyance, the trial court has held that the plaintiff has been able to prove that the defendants have been guilty of conduct which is nuisance and annoyance. Therefore, the plaintiff is entitled to get the possession of the suit premises on the ground of nuisance and annoyance and hence, the said issue was decided in favour of the plaintiff. Therefore, the trial court by its judgment and decree dated 30th June, 1994 decreed the suit in favour of the plaintiff and directed the defendants to hand over vacant and peaceful possession of the suit premises to the plaintiff.

6. Being aggrieved by the said judgment and decree of the trial court, the appellant-original defendant no. 1/2 filed an appeal being Appeal No. 78 of 1994 before the Appellate Bench of Small Cause Court, Ahmedabad. The Appellate Bench vide its order dated 3.1.97 directed the trial court to decide the following issue.

(1) Whether the plaintiff proves that the defendant no. 1/2 has unlawfully and without permission of the landlady started tea stall in the marginal land in contravention of the provisions of The Bombay Rent Act ?

7. The trial court, after giving full opportunity of hearing to the parties concerned, decided the issue in favour of the plaintifff on 30th March, 1997 by answering the issue in the affirmative. The Appellate Bench framed four points for its determination. At this stage, I would like to point out that this court is concerned only with regard to the following point nos. 2 and 3 framed by the appellate bench.

1. Whether the learned trial Judge has committed an error in holding that the defendant no. 1/2-appellant has committed breach of conditions of tenancy by installing tea kitley on marginal land situated in front of the suit premises and thereby he has become liable to be evicted from

the suit premises ?

2. Whether the learned trial Judge has commited an error in holding that the defendant no.1/2 i.e. present appellant is guilty of conduct which is a nuisance and annoyance to the adjoining or neighbouring occupiers and has become liable to be evicted on this ground ?

The Appellate Bench, after going through the evidence on record, has come to the conclusion that the appellant is running a tea kitley inspite of requests of the landlady to stop it and knowing well that he has no right to run the tea kitley in the marginal land that was causing nuisance to the landlady and bad smell of kerosene to the landlady which would cause nuisance to her and her family members. The petitioner is doing business continuously and it cannot be said that it is a temporary use of the marginal land by serving tea to customers, but thereby he is causing nuisance and annoyance to the neighbouring occupiers and would certainly amount that he is guilty of causing nuisance and annoyance. The petitioner had not produced any kind of documentary evidence, cogent or reliable evidence to show that there was any new rent note which took place between his father and landlady or him in respect of the use of the marginal land or creation of new tenancy so the condition laid down in exh. 92 rent note executed by the deceased Ambalala are binding upon the present petitioner. As per conditions at clause nos. 2 and 3, the marginal land admeasuring 15 ft. is the way for ingress and outgress to the premises in dispute and the tenant would not instal a AGalla and cabin on it neither he would allow anybody to do so and that marginal land is not rented to him and only room is rented out to him. In view of all these, the Appellate Bench of the Small Causes Court, Ahmedabad by its judgment and order dated 8.9.97 has dismissed the appeal of the appellant. Therefore, being aggrieved by the same, the appellant has filed the present Revision Application in this Court.

8. The first contention of the learned counsel for the petitioner is that the existence of use of marginal land was not at the time of the institution of the suit. This ground of nuisance and annoyance has been subsequently added by amendment application. As such, the courts below have committed an error in holding that the petitioner is guilty of misconduct amounting to nuisance and annoyance. As the cause of action was not in existence at the time of the institution of the suit,

the Rent Court had no jurisdiction to decree the suit on the ground of nuisance and annoyance for which there was no cause of action at the relevant time, but it came into existence lateron after the amendment made in the plaint.

I have carefully considered this contention of the learned advocate for the petitoner. But that contention is not entertainable in the eye of law in view of the fact that the petitioner himself has admitted in the written statement that he is using this land since 20 years. Therefore, this ground was already in existence and it cannot be said that it was not available at the earliest stage.

9. The next contention of the learned advocate for the petitioner is that the room was leased out to the petitioner and the marginal land was not leased out to him. The use of the marginal land does not come within the jurisdiction of the Rent Court. Therefore, the Rent Court has no jurisdiction to decide the issue in respect of the property which is not included and which is said to have been encroached upon by the petitioner. In this regard, he referred the provisions of section 6(1) of the Act wherein the jurisdiction is covered in respect of the area specified in Schedule-I of part-I to the premises let for residence, education, business, trade or storage and also to open land let for business purpose and he emphasised on the words " premises let out". He also referred to section 28 of the Act wherein the Court of Ahmedabad shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises. As such, the emphasis of the learned advocate for the petitioner is that only the premises which is let out to the petitioner is covered by the provisions of section. The marginal land was not let out to the petitioner and hence that land is not covered under the provisions of the Rent Act, as a result, the suit for possession of the suit premises is not maintainable.

This ground has been raised for the first time before this Court. This ground has not been taken before the lower appellate Court or before the trial court that suit is not maintainable as the property of the marginal land is not covered under the provisions of the Act. On the other hand, the rent note says that the room was let out to the petitioner and the marginal land is also attached to that property. It cannot be said that it is not included in the rent note though a separate clause has been incorporated in the rent note

that this property will remain as open land and it will not be used by the petitioner or by any other person to be used as pan galla and in any other manner. Thus, it can be said that as such, this land is required by the landlady to remain open and to be used for ingress and outgress. That was not to be used for any other business or trade purpose. Therefore, the contention of the learned advocate for the petitioner in this respect is not maintainable.

10. The learned advocate for the petitioner also submitted that the land is being used for a teal stall and that is only a temporary use which does not amount to nuisance and for that purpose, he relied on the case of Kanaiya Lal vs. Hari Singh reported in AIR 1996, Rajasthan, 182 wherein in para-11 it is held that any blockade of the passage with a view to cause obstruction in the user of the passage by other tenants as well as respondent in the suit premises, since admittedly it has come in the evidence that the width of the passage is 11' against which there was temporary blockade of 8' leaving balance of 3' for user. This, in my opinion cannot be deemed to be which tenant was admitted to tenancy of premises or which is likely to affect adversely and substantially the interest of the landlord therein. The shop premises is admittedly in subji mandi area where there is bound to be some sort of frequent nuisance by trucks, carts and thelas etc. carrying vegetable loads and this fact was in full knowledge of the respondent landlord before letting out the premises in question to the appellant who was dealing with the business of vegetables, fruits etc.

According to the learned advocate for the petitioner, carrying on business of tea in the marginal land is only a temporary blockade which is not a nuisance as held by the Rajasthan High Court.

11. The lower appellate court has considered the facts and circumstances of the case cited by the learned advocate for the petitioner and has come to the conclusion that the facts of that case are totally different and are not applicable to the facts of the present case. In my view, it is not a temporary blockade of passage, but it is admitted by the petitioner in the written statement as well as in the reply that this land is being used as a tea stall since 20 years. As such, it cannot be said that it is a temporary blockade not amounting to nuisance.

12. The learned counsel for the petitioner further contended that the objection of the respondent is that the tea stall is being carried on with the help of kerosene which gives bad smell to the respondent land-lady as well to the neighbourers. But the use of the land for keeping a tea stall with the kerosene stove creating bad smell of kerosene does not amount to nuisance and annoyance. In this respect, he relied on the judgment of this court in the case of Duabhai Lalji Kalidas vs. Ramniklal Somchand Mehta reported in AIR 1975, Gujarat,213 wherein it has been held that in absence of expert evidence on the point, to rely upon evidence of neighbouring occupiers who are layman is very risky.

In the case cited by the learned advocate for the petitioner, there was a smell of chemicals being used by washermen and it was considered by the courts below that bad smell amounted to nuisance and this Court came to the conclusion that for bad smell, there should be an expert evidence. The evidence of the neighbourers or occupiers as layman should not be accepted.
both the courts below have recorded findings on the basis of the evidence on record that the act of the petitioner in installing a tea kitley in the marginal land creates nuisance and annoyance and that is also against terms and conditions of the rent note. It is not necessary that the tenant or any other person residing with the tenant should be held guilty of the conduct under the provisions of section 13(1)(c) of the Act which is nuisance or annoyance to the adjoining or neighbouring occupiers.
It is not required under the law that the person should have been declared guilty by a court of law.

13. The learned advocate for the petitioner also contended that the use of marginal land by installing a tea stall in the marginal land does not amount change of user. He also relied on the decision of the Apex Court in the case of Gurdial Batra vs. Raj Kumar Jain reported in AIR 1989, SC,1841. The facts and circumstances of the case cited by the learned advocate for the petitioner are totally different and not applicable to the facts of the present case at all. In that case, the land was let out for a business purpose. At one time, he started one business and lateron that business was changed by the tenant. Hence, the Supreme Court, after consideration held that that would not amount to change of user of the land.

14. Lastly, the learned advocate for the petitioner contended that breach of condition of rent

note does not amount to a ground under section 13 of the Act for eviction of the petitioner from the suit premises. According to him, this land is required to be kept open land as per terms of the rent note and it was not to be used for business purpose et. As such, this ground is not a ground for passing eviction decree under section 13 of the Act. Therefore, Small Cause Court had no jurisdiction to adjudicate the issue regarding use of the marginal land by the petitioner. I have given my anxious thought to this contention raised by the learned advocate for the petitioner, but I do not find any substance in this submission inasmuch this land attached to the room which was kept open and to be used only for ingress and outgress of the persons and that was not to be used for any business purpose. The change of user of the land which is attached to the rented premises will be covered under the provisions of the Act and will also be a ground for eviction.

15. Both the courts below have recorded findings on the basis on the evidence on record. Therefore, this Revision Application has no merit. Thus, I do not find any good reason to exercise revisional jurisdiction under section 29 of The Bombay Rent Act to interfere with the concurrent findigs recorded by both the courts below. The Revision Application is therefore, required to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated forthwith.

16. In the last the learned advocate for the petitioner requested that the petitioner may not be evicted for a period of two months, in compliance with the judgments of the lower Courts with a view to approach the higher forum. I do not find any reasonable ground to acceed to this request and hence the request is rejected.

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